

1 MICHAEL G. RHODES (116127) (mrhodes@cooley.com)
 2 MATTHEW D. BROWN (196972) (brownmd@cooley.com)
 2 JEFFREY M. GUTKIN (216083) (gutkinjm@cooley.com)
 COOLEY LLP
 3 101 California Street, 5th Floor
 San Francisco, CA 94111-5800
 4 Telephone: (415) 693-2000
 Facsimile: (415) 693-2222

5 S. ASHLIE BERINGER (263977)
 6 (ABeringer@gibsondunn.com)
 GIBSON DUNN & CRUTCHER LLP
 7 1881 Page Mill Road
 Palo Alto, CA 94304-1211
 8 Telephone: (650) 849-5219
 Facsimile: (650) 849-5333

9 Attorneys for Defendant FACEBOOK, INC.

10
 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

14 ANGEL FRALEY; PAUL WANG; SUSAN
 15 MAINZER; JAMES H. DUVAL, a minor, by
 and through JAMES DUVAL, as Guardian ad
 Litem; and W.T., a minor, by and through
 16 RUSSELL TAIT, as guardian ad Litem;
 individually and on behalf of all others
 17 similarly situated,

Case No. 11-CV-01726 LHK (PSG)

**DECLARATION OF ANA YANG MULLER IN
 SUPPORT OF FACEBOOK, INC.'S
 OPPOSITION TO PLAINTIFFS' MOTION
 FOR CLASS CERTIFICATION**

Date: May 24, 2012
 Time: 1:30 p.m.
 Courtroom: 4
 Judge: Hon. Lucy H. Koh
 Trial date: December 3, 2012

**[PUBLIC REDACTED
 VERSION]**

18 Plaintiffs,
 19 v.
 20 FACEBOOK, INC, a corporation; and DOES
 21 1-100,

22 Defendants.

1 I, Ana Yang Muller, hereby declare as follows:

2 1. I am currently employed by Defendant Facebook, Inc. ("Facebook") as a Legal
 3 Project Manager. I have been a Facebook employee for over two years. Based on my overall
 4 experience working for Facebook, I have knowledge of Facebook's current and historical terms
 5 and the sign-up process for new users ("Users"). Except as otherwise noted, I have personal
 6 knowledge of the following facts and, if called to testify, could and would testify competently
 7 thereto.

8 **Applicable Terms**

9 2. To register for an account on (i.e., signing up for) Facebook, a user ("User") must
 10 agree to Facebook's terms, currently called the Statement of Rights and Responsibilities ("SRR").

11 3. Facebook has revised its terms on different occasions since 2007. Copies of
 12 certain versions of such term revisions are as attached as Exhibit A-I to this declaration.

13 4. Attached hereto as **Exhibit A** is a true and correct copy of the Terms of Use that
 14 went into effect for all Users on or about May 24, 2007. I have been advised that Plaintiff Susan
 15 Mainzer registered for a Facebook account [REDACTED]

16 [REDACTED]. I have also been advised that former named Plaintiff Angel Fraley registered for a
 17 Facebook account [REDACTED].

18 5. Attached hereto as **Exhibit B** is a true and correct copy of the revised Terms of
 19 Use that went into effect for all Users on or about November 14, 2007.

20 6. Attached hereto as **Exhibit C** is a true and correct copy of the revised Terms of
 21 Use that went into effect for all Users on or about November 15, 2007.

22 7. Attached hereto as **Exhibit D** is a true and correct copy of the revised Terms of
 23 Use that went into effect for all Users on or about September 23, 2008. I have been advised that
 24 Plaintiff James Duval registered for a Facebook account [REDACTED]

25 [REDACTED].

26 8. Attached hereto as **Exhibit E** is a true and correct copy of the revised Terms of
 27 Use that went into effect for all Users on or about February 4, 2009.

1 9. Attached hereto as **Exhibit F** is a true and correct copy of the SRR that went into
 2 effect for all Users on or about August 28, 2009.

3 10. Attached hereto as **Exhibit G** is a true and correct copy of the revised SRR that
 4 went into effect for all Users on or about April 22, 2010. I have been advised that Plaintiff W.T.
 5 registered for Facebook on [REDACTED].

6 11. Attached hereto as **Exhibit H** is a true and correct copy of the revised SRR that
 7 went into effect for all Users on or about October 4, 2010.

8 12. Attached hereto as **Exhibit I** is a true and correct copy of the current SRR that
 9 went into effect for all Users on or about April 26, 2011.

10 **Selected Provisions in Facebook's Terms**

11 13. Each version of the Facebook terms attached to my declaration (Exs. A-I) states in
 12 some form that continued use or access of Facebook constitutes acceptance of the terms then in
 13 effect. (Ex. A, at FB_FRA_000259; Ex. B, at FB_FRA_000795; Ex. C, at FB_FRA_000272; Ex.
 14 D, at FB_FRA_000302; Ex. E, at FB_FRA_000325; Ex. F, at FB_FRA_000334; Ex. G, at
 15 FB_FRA_000402; Ex. H, at FB_FRA_000409; Ex. I, at FB_FRA_000529.)

16 14. For instance, the May 24, 2007 and September 23, 2008 Terms of Use state, in
 17 part: "We reserve the right, at our sole discretion, to change, modify, add, or delete portions of
 18 these Terms of Use at any time without further notice Your continued use of the Service or
 19 the Site after any such changes constitutes your acceptance of the new Terms of Use." (Ex. A, at
 20 FB_FRA_000259; Ex. D, at FB_FRA_000302.)

21 15. The April 22, 2010 SRR likewise states, in part: "We can change this Statement if
 22 we provide you notice (by posting the change on the Facebook Site Governance Page) and an
 23 opportunity to comment. To get notice of any future changes to this Statement, visit our Facebook
 24 Site Governance Page and become a fan." (Ex. G, ¶ 13.1.)

25 16. Each version of the Facebook terms attached to my declaration (Exs. A-I) states, in
 26 part, that the then-current version of the terms "supersede[s] any prior agreements" between the
 27 User and Facebook. (Ex. A, at FB_FRA_000271 ("Other"); Ex. B, at FB_FRA_000807

1 (“Other”); Ex. C, at FB_FRA_000284 (“Other”); Ex. D, at FB_FRA_000316 (“Other”); Ex. E, at
 2 FB_FRA_000333 (“Other”); Ex. F, ¶ 18.1; Ex. G, ¶ 18.1; Ex. H, ¶ 18.2; Ex. I, ¶ 18.2.)
 3

4 17. Each version of the Facebook terms attached to my declaration (Ex. A-I) states, in
 5 part, that Users provide Facebook with permission or consent to republish certain types of content
 6 and activity on the site. (Ex. A, at FB_FRA_000262 (“User Content Posted on the Site”); Ex. B,
 7 at FB_FRA_000798 (“User Content Posted on the Site”); Ex. C, at FB_FRA_000275 (“User
 8 Content Posted on the Site”); Ex. D, at FB_FRA_000316 (“Other”); Ex. E, at FB_FRA_000329
 9 (“Licenses”); Ex. F, ¶ 10.1; Ex. G, ¶ 10.1; Ex. H, ¶ 10.1; Ex. I, ¶ 10.1.)

10 18. For instance, the May 24, 2007 Terms of Use state, in part: “By posting User
 11 Content to any part of the Site, you automatically grant, and you represent and warrant that you
 12 have the right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable,
 13 fully paid, worldwide license (with the right to sublicense) to use, copy, publicly perform,
 14 publicly display, reformat, translate, excerpt (in whole or in part) and distribute such User
 15 Content for any purpose on or in connection with the Site or the promotion thereof, to prepare
 16 derivative works of, or incorporate into other works, such User Content, and to grant and
 17 authorize sublicenses of the foregoing.” (Ex. A, at FB_FRA_000262 (“User Content Posted on
 18 the Site”)).

19 19. The September 23, 2008 Terms of Use state, in part: “By posting User Content to
 20 any part of the Site, you automatically grant, and you represent and warrant that you have the
 21 right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable, fully paid,
 22 worldwide license (with the right to sublicense) to use, copy, publicly perform, publicly display,
 23 reformat, translate, excerpt (in whole or in part) and distribute such User Content for any purpose,
 24 commercial, advertising, or otherwise, on or in connection with the Site or the promotion thereof,
 25 to prepare derivative works of, or incorporate into other works, such User Content, and to grant
 26 and authorize sublicenses of the foregoing.” The only difference between this excerpt and the
 27 May 24, 2007 Terms of Use is the addition of the phrase, “commercial, advertising, or
 28 otherwise.” (Ex. D, at FB_FRA_000305 (“User Content Posted on the Site”)).

20. The April 22, 2010 SRR states, in part: "You can use your privacy settings to limit how your name and profile picture may be associated with commercial or sponsored content served by us. You give us permission to use your name and profile picture in connection with that content, subject to the limits you place." (Ex. G, ¶ 10.1.)

21. The October 4, 2010 SRR states, in part: “You can use your privacy settings to limit how your name and profile picture may be associated with commercial, sponsored, or related content (such as a brand you like) served or enhanced by us. You give us permission to use your name and profile picture in connection with that content, subject to the limits you place.” (Ex. H, ¶ 10.1.) This version of the SRR was in place before and for several months after the January 2011 launch of Sponsored Stories.

22. The current SRR states, in part, “You can use your privacy settings to limit how your name and profile picture may be associated with commercial, sponsored, or related content (such as a brand you like) served or enhanced by us. You give us permission to use your name and profile picture in connection with that content, subject to the limits you place.” (Ex. I, ¶ 10.1.)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 19, 2012 at Menlo Park, California.

/s/ Ana Yang Muller
Ana Yang Muller

GENERAL ORDER 45 ATTESTATION

In accordance with General Order 45, concurrence in the filing of this document has been obtained from the signatory and I shall maintain records to support this concurrence for subsequent production for the Court if so ordered or for inspection upon request by a party.

Dated: April 19, 2012

COOLEY LLP

/s/ Michael G. Rhodes

Michael G. Rhodes
Attorneys for Plaintiff

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